

**MINUTES OF THE MAY 2014 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Tuesday, May 13, 2014, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.

Members present: Senator Wally Horn, Chair, and Representative Dawn Pettengill, Vice Chair [by teleconference]; Senators Mark Chelgren, Pam Jochum, and Roby Smith; Representatives Lisa Heddens, Rick Olson, Jeff Smith, and Guy Vander Linden were present. Senator Thomas Courtney was not present.

Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Brenna Findley, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.

Convened Sen. Horn convened the meeting at 9 a.m.

Fiscal overview Adam Broich presented the LSA fiscal report.

REVENUE DEPARTMENT Alana Stamas and Jessica Braunschweig-Norris represented the department.

ARC 1442C No action on amendments to chs 10, 67 and 68, which are related to motor fuel, specifically, the penalty for violations, administration, tax rates, and distributors' and dealers' right to blend.

ARC 1443C No action on ch 237, reinvestment districts program.

Committee review of emergency rule making Ms. Braunschweig-Norris presented for committee review the emergency rule making described below and requested committee approval of the rule making prior to emergency adoption.

To conform to 2013 Iowa Acts, Senate File 295, division VI, an amendment to 71.21(6) modifies the statutory period for filing a written notice of appeal to the property assessment appeal board. The written notice of appeal shall be filed with the secretary within 20 calendar days after the date of adjournment of the local board of review or May 31, whichever is later.

Motion to approve Rep. Vander Linden moved approval of the emergency rule making.

Motion carried On a voice vote of 8 to 0, the motion carried.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Jennifer Vermeer and Deb Johnson represented the department. Other interested parties included Geoffrey Lauer of the Brain Injury Alliance of Iowa; Ben Woodworth of the Iowa Association of Community Providers (IACP); Tom Brown; and Frank Velinsky and Jason Velinsky of Caretech, Inc.

ARC 1447C No action on amendments to 75.21 concerning the health insurance premium payment (HIPP) program.

ARC 1445C Amendments to chs 77 and 83 pertain to brain injury (BI) waivers, including online training for BI waiver providers, removal of services from monthly cost limits for certain waivers, and removal of the age limit for the BI waiver.

At the request of the committee, Ms. Vermeer presented the background on the training for BI waiver providers. She explained the process by which the Iowa Medicaid enterprise (IME), in response to advocates and providers, coordinated a workgroup of interested parties; with the public health department, contracted with IACP to develop, customize and deliver a modular, evidence-based, Web-enabled training curriculum; and purchased and adapted the Michigan brain injury online curriculum.

Ms. Freudenberg stated that current rule 77.39 allows home- and community-based BI waiver providers and each of their staff members involved in direct consumer service to have either training regarding or experience with individuals who have a brain injury. She explained that the amendments revise the rule to require that before providing care, providers and their staff complete training regarding individuals who have a brain injury; the experience alternative is eliminated. Ms. Freudenberg stated that providers are already required to provide training regarding brain injuries and that because training content had varied among providers, this standardized training will ensure that providers and their staff have consistent information regarding brain injuries.

Human Services Department (continued)

Committee members commended the standardization of the training and discussed the following topics of concern related to the training: the absence of an alternative to the training or a grandfathering mechanism to allow experienced direct care workers to continue providing services; the impact of the training requirement on current providers and their staff, including direct care workers' knowledge of and access to computers; the training modules, including a method for assessing an individual's understanding of the material; reduction in turnover; the rationale for exempting certain providers, e.g., providers of transportation, and for not exempting other providers, e.g., housekeepers, from the rule; and representation of and input from individual consumer-directed attendant care (CDAC) providers in formulating the amendments.

In response to an inquiry from Rep. Olson, Ms. Johnson stated that the department will provide the committee with the number of pages in a printed version of the training modules. In response to an inquiry from Rep. Pettengill, Ms. Vermeer stated that the department will reexamine the exemptions.

Sen. Chelgren requested that the department consider a way to take into account a service provider's previous experience; require a basic level of information; and if the module is scored, keep the results secure, or if the module is not scored, provide certification of completion.

Mr. Lauer stated that the four-module training is more up-to-date, consistent, accessible, affordable, available and acceptable than the variety of current training methods. Mr. Woodworth stated that the new training is a significant improvement because it will reduce the burden on providers, streamline the process for and reduce turnover among direct care workers, and improve outcomes for clients. Mr. Brown, who uses the modules for staff training, stated that up-to-date information about brain injury is essential for efficient, effective delivery of medical services to persons with brain injuries. Mr. Frank Velinsky and Mr. Jason Velinsky expressed opposition to the amendments and voiced concern about the effect of the level of training and expectations on the provision of in-home BI waiver services, including the recruitment and retention of in-home caregivers and the continued viability of individual providers' businesses.

The committee requested that the rule making be placed on the June agenda for further discussion, including, at the request of Rep. Vander Linden, the actual impact of the rule on individual providers and their family members.

ARC 1444C No action on the rescission of ch 169, funding for empowerment areas.

ARC 1446C No action on amendments to 170.4(2)"a" regarding the annual update of the child care assistance (CCA) sliding fee schedule.

AGING, DEPARTMENT ON Kimberly Murphy and Deanna Clingan-Fischer represented the department.

ARC 1428C No questions on proposed amendments to ch 1 pertaining to Iowa aging program instructions and to definitions.

ARC 1427C No questions on proposed amendments to 5.9(2) and 5.10(2) regarding the removal of references to Iowa aging program instructions related to department fiscal operations.

ARC 1426C No questions on proposed amendments to ch 6 concerning planning and administration of area agencies on aging.

ARC 1425C Proposed amendments to ch 8 pertain to the long-term care ombudsman program. In response to Sen. Chelgren, who commended the reduction in required training hours for volunteers, Ms. Murphy stated that the Iowa Code does not set forth the required hours of training and that the state long-term care ombudsman has determined 12 hours to be sufficient. In response to an inquiry from Sen. Jochum, Ms. Clingan-Fischer stated that the 12-hour initial training provides sufficient time to cover the necessary information, eliminating the burden of the current 24-hour requirement. In response to an inquiry from Sen. Chelgren, Ms. Clingan-Fischer stated that the terms "personal records" and "social records," which have the same meaning, are not defined in the Older Americans Act and that the change from "social records" to "personal records" in the rule provides consistency with the Iowa Code.

ARC 1424C No questions on the proposed rescission of ch 9, resident advocate committees.

Aging, Department on (continued)

ARC 1423C Proposed 23.7 pertains to options counselors. Sen. Chelgren recommended that in 23.7(4)“d,” the phrase “in a human services field” be removed to allow the area agency on aging the discretion to determine whether a person with an associate’s degree and four years of experience specified in 23.7(4)“d” is a qualified applicant.

COLLEGE STUDENT AID COMMISSION Julie Leeper and Lawrence Bice represented the commission.

ARC 1419C Proposed ch 28 pertains to the teach Iowa scholar program. In response to inquiries from Rep. Pettengill: Mr. Bice stated that when the rules are adopted, the statutory term “accredited nonpublic school” will be substituted for “nonpublic school recognized and approved by the department” in the definition of “eligible school or agency”; Ms. Leeper explained that the hard-to-staff subject areas that are listed in the Iowa Code, including science, technology, engineering, math, English as a second language, and special education, but are not stated in the definition of “eligible teaching field” will be included in staffing decisions related to hard-to-staff subject areas, and Mr. Bice further explained that these subject areas must be included and other subject areas will be added based on an annual formula-based review; and Ms. Leeper clarified that because ch 28 was drafted before 2014 Iowa Acts, House File 2347, was passed, 28.4(3), pertaining to the disbursement of award, will be revised before adoption to reflect that the payment of specified types of loans may be made directly to the applicant’s student loan holder. In response to an inquiry from Sen. Chelgren, Ms. Leeper confirmed that the requirement in 28.3(1) that an applicant must have graduated in the top 25 percent academically of students completing teacher preparation programs is set forth in Iowa Code section 261.110(3a).

EDUCATION DEPARTMENT Director Brad Buck, Phil Wise, Lawrence Bice, Nicole Proesch, Barb Ledvina, Ann Feilmann, Marietta Rives and Jeff Berger represented the department. Mr. Wise acknowledged the work of rules coordinator Mike Cormack, who has become chair of the public employment relations board (PERB); introduced Director Brad Buck, who gave brief introductory remarks; and acknowledged the future retirement of Joe Royce.

ARC 1433C No action on amendments to ch 21 pertaining to the drinking drivers course. Ms. Ledvina stated that a proposed out-of-state course of at least 8 contact hours has been removed from 21.31(3); instead, the out-of-state course is required to be comparable to that approved to be offered in the state of Iowa.

ARC 1432C No action on 58.11 relating to nutritional content standards for foods and beverages sold to students (e.g., vending, á la carte lines, and school stores) outside the reimbursable meals that are part of the national school lunch program. Ms. Feilmann stated that based on the concerns expressed by the committee, the standards, proposed to be adopted by reference, instead appear in a table format to provide clarity to and ease of use by school districts and other interested parties.

ARC 1434C No action on amendments to 79.15(7)“a” regarding an alternate subject assessment for teacher candidates.

ARC 1435C No action on 83.6 pertaining to professional development for teachers.

Committee review of emergency rule making Mr. Berger presented for committee review the emergency rule making described below and requested committee approval of the rule making prior to emergency adoption.

Amendments to ch 97 modify supplementary weighting rules to conform to 2014 Iowa Acts, House File 2271, the Shared Operational Functions Act, pertaining to operational functions supplementary weighting, and Senate File 2056, the Reorganization Incentives Extension Act, pertaining to whole-grade sharing arrangements incentives. Ms. Proesch stated that the emergency rule making is necessary so that the rule may be implemented for the 2014-2015 school year. Mr. Berger explained that the emergency rule making ensures that the rule aligns with the statute and that no gap in funding will occur.

Motion to approve Rep. Vander Linden moved approval of the emergency rule making.

Motion carried On a voice vote of 8 to 0, the motion carried.

ECONOMIC DEVELOPMENT AUTHORITY Tim Whipple and Kristin Hanks represented the authority.

ARC 1430C Proposed amendments to chs 76 and 187 and the rescission of chs 113 and 410 pertain to economic development programs authorized in Iowa Code chapters 15 and 15E and to compliance cost fees. In response to an inquiry from Rep. Smith, Mr. Whipple stated that the business and compliance fees were passed in the 2013 legislative session and will be recouped by the authority for services that are a benefit to the recipients of the tax credits. Mr. Whipple clarified for Sen. Chelgren that the changes in Item 8 update the maximum aggregate tax credit cap to comply with current statutory changes. Sen. Chelgren suggested that the authority consider imposing a compliance fee greater than that set forth in 187.6(2) on companies requiring more of the authority's administrative time.

ARC 1429C No action on amendments to 115.9(1) regarding the time frame for submittal of documentation related to tax credits for investments in qualifying businesses.

ENGINEERING AND LAND SURVEYING EXAMINING BOARD Bob Lampe represented the board.

ARC 1441C No questions on proposed amendments to 8.2(6)"a" regarding unethical or illegal conduct related to business practices.

ENVIRONMENTAL PROTECTION COMMISSION Randy Clark represented the commission.

ARC 1421C Proposed amendments to chs 64 and 65 pertain to NPDES permits for animal feeding operations. In response to a two-part inquiry from Sen. Chelgren, Mr. Clark stated that the department scheduled evening hearings and provided other means for comment, such as e-mail, in order to accommodate members of the public who might be unable to attend hearings in the daytime during planting season. Second, Mr. Clark stated that statutory provisions exist for the discipline of habitual violators.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

ARC 1440C No questions on a proposed amendment to 10.20 to adopt by reference federal occupational safety and health standards pertaining to mechanical power presses.

ARC 1422C No action on amendments to 90.7 pertaining to fees related to the boiler and pressure vessel program. Sen. Chelgren requested that the division provide to the committee an analysis of the program's revenue and expenditures to determine over time whether the data trend toward solvency.

NATURAL RESOURCE COMMISSION Willie Suchy represented the commission.

ARC 1450C No questions on proposed amendments to ch 91 pertaining to the waterfowl and coot hunting seasons and to a special September teal season.

SOIL CONSERVATION DIVISION Margaret Thomson represented the division.

ARC 1448C No action on amendments to ch 10 regarding the financial incentive program for soil erosion control.

STATE PUBLIC DEFENDER Sam Langholz and Kurt Swaim represented the office of the state public defender.

ARC 1437C Proposed amendments to chs 1, 4, 7 and 12 to 14 pertain to claims for services. Mr. Langholz explained that the amendments establish a number of safeguards in response to the improper billing practices of some indigent defense contract attorneys. The safeguards include setting a maximum number of aggregate hours that can be billed in one day, requiring detailed itemized time and expense reimbursement records, establishing additional documentation requirements for claims of attorneys whose contracts were canceled for improper billing practices, and clarifying the prohibition of other improper practices, i.e., standardized billing, estimated billing and duplicative mileage reimbursements. Mr. Langholz stated that an online billing system currently in development would streamline and standardize the billing process.

In response to inquiries from Rep. Olson and Sen. Chelgren, Mr. Langholz explained that his office may contract with the attorneys whose contracts were canceled, though one of the nine attorneys is facing criminal charges; clarified that contract attorneys cannot bill for the completion of claim forms; and stated that a contract attorney may bill for 12 hours per day and, for a trial or hearing, may bill a maximum of 16 hours per day if the billing contains further explanation.

State Public Defender (continued)

Sen. Chelgren commended the standardization of the billing process and expressed the hope that attorneys whose claim forms are currently complete and accurate might continue to use their own systems. In response, Mr. Langholz stated that the online billing system may be designed to accommodate attorneys' existing billing systems.

ARC 1438C

No questions on proposed amendments to ch 11 regarding contracts and attorney qualifications.

Committee business

The minutes of the April 4, 2014, meeting were approved.

The next meeting was scheduled for Tuesday, June 10, 2014, at 9 a.m.

Adjourned

The meeting was adjourned at 11:45 a.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill